March 1, 2004

William J. Keese, Chairman
California Energy Commission
Docket Unit, MS-4
*Attn: Docket No. 00-AFC-14
1516 Ninth Street
Sacramento, CA 95814-5512

Re: El Segundo Power Redevelopment (ESPR), 00-AFC-014; Applicant's Supplemental Comments to Presiding Members Proposed Decision

Dear Chairman Keese:

El Segundo Power II LLC ("ESP II") respectfully submits these supplemental comments to the Presiding Member's Proposed Decision ("PMPD") on the El Segundo Power Redevelopment ("ESPR") project in response to other parties' comments on the PMPD.

At the February 23, 2004 Committee Workshop on the PMPD, and in their written comments, ESP II believes that several parties have made misleading statements regarding ESPR that ESP II is compelled to correct. If these characterizations, assertions and arguments go unchallenged, the Committee and Commission could be misled into believing that there are fundamental problems with the PMPD.

In truth, the PMPD is fundamentally sound and ESPR is an excellent example of an efficient, low impact, high benefit project that makes all the sense in the world to permit as soon as possible. While some parties, perhaps in their zealous commitment to certain causes, describe a bleak picture should ESPR be permitted, the truth is simple and far from bleak. ESPR continues using existing resources to produce cleaner electricity more efficiently than before. The cooling system is permitted, operational, and allowed to operate in the future to support this project. ESPR replaces older and less efficient units with new technology coupled with state-of-the-art emission control equipment. The project results in a better looking, newly landscaped power plant site with increased opportunity for enjoyment of El Segundo beaches and views. The project contains a tremendous level of unprecedented agreement between two cities, CEC Staff, the Applicant and several intervenors on nearly every issue area.

The Disagreement Over Biology

All of the parties have worked hard for three years to reach agreement on ESPR. Other than minor corrections or requested adjustments to a few agreed upon conditions, what remains is the contested topic of biology and the way in which ESPR makes use of an existing, permitted, operational cooling system whose operation falls under the jurisdiction of the Los Angeles Regional Water Quality Control Board ("LARWQCB"). This issue was fully explored at the evidentiary hearings one year ago, and carefully briefed last summer. The PMPD clearly shows that the Committee has a clear understanding of the marine biology issues and ESP II's primary contentions that:

1) ESPR makes no physical changes to Intake #1 at El Segundo Generating Station ("ESGS").

2) The LARWQCB will allow ESPR to rely upon the Intake #1 cooling system under the existing NPDES permit and will not require any studies or new permits.

3) The existing cooling system was legally studied in a scientific manner and permitted under the Clean Water Act.

4) The existing cooling system has been allowed to use up to 208 MGD of seawater since the 1950's. In that time, no evidence has been found to support that the operation of Intake #1 has ever, let alone continuously or cumulatively, had a significant effect on the Santa Monica Bay.

5) The California Coastal Commission ("CCC") has found, through the El Segundo Local Coastal Program, that coastal marine resources are adequately protected by existing federal and state regulations that govern the operation of the cooling system.

6) The California Coastal Act ("CCA") and its "enhance and restore" provisions are not triggered with regard to marine resources because the project does not change, develop or otherwise physically modify the intake or outfall systems or their operation.

Because, however, CEC Staff and several other parties have not recognized that ESPR is a very unique project in a very different location from other CEC once-

through cooling projects with very different circumstances, these parties continue to repeat their earlier arguments. These arguments, quite frankly, are wrong. They may be right for other projects with different circumstances, but they do not fit ESPR.

The ESPR PMPD IS Consistent with Past CEC Decisions

CEC Staff suggests that the ESPR PMPD breaks with past precedent and that it must therefore be a wrong decision. That argument is factually wrong.

CEC Staff cited Morro Bay, Huntington Beach and Moss Landing as past precedents with which the ESPR PMPD conflicts. Conveniently missing from that list is the most analogous project procedurally, Contra Costa. Also, conveniently not explained are the vastly different habitats and locations that Morro Bay and Moss Landing occupy and the fundamentally different circumstances involved in Morro bay, Moss Landing and Huntington Beach.

Contra Costa is the most comparable and analogous project in terms of cooling system use because, like ESPR, Contra Costa made use of an existing cooling system. Like ESPR, Contra Costa raised the ambiguous conjecture that the new project would increase the lifetime and operational characteristics of the existing cooling system. Also, like ESPR, the San Francisco Regional Water Quality Control Board did not require Contra Costa to conduct a new study and treated the project as an existing facility for intake purposes. The result? Contra Costa was approved without conducting an updated entrainment study. Like Contra Costa, ESPR has satisfied the LARWQCB, and does not involve physical changes to the cooling system. Instead, the only basis for claiming some type of new entrainment impact or effect from ESPR is one of conjecture and less than certain assumptions or predictions.

Morro Bay and Moss Landing are not comparable to ESPR for several reasons. First, both Morro Bay and Moss Landing remove seawater from much more productive and sensitive habitats. At those plants, cooling water is extracted from shallow water embayments associated with coastal estuaries and wetlands. Such areas are characteristically regarded as marine nursery areas for marine species They are restricted water masses, radically different than the open coastal environments common to Southern California particularly Santa Monica Bay. Moreover, the responsible Regional Water Quality Control Board in those projects required new NPDES permits and corresponding entrainment studies for each of those projects. ESPR is located in a sandy bottom open bay with significantly less dense larval and adult fish populations spread among a substantially larger volume of water. Moreover, as noted by the LARWQCB, ESPR does not require a new NPDES permit

or entrainment study because it continues to operate under an existing, operational cooling system's existing NPDES permit.[1]

Furthermore, Huntington Beach is also not analogous to ESPR. Huntington Beach was permitted using a 21 day permitting process implemented under an executive order from Governor Davis that relied upon the Governor's emergency powers. In that project, the applicant agreed to many requirements simply as part of the process of permitting the project in its unprecedented time frame, very little of which was based on precedent. It is also worth noting that even though the project owner finally reached agreement with the CEC Staff on how to conduct an entrainment study, the study is not yet complete and may not satisfy the new NPDES requirements. The Santa Ana Regional Water Quality Control Board did not participate in the development of the CEC studies at Huntington Beach. Thus, the data from the agreed-to protocol may not even be used for compliance with the new 316(b) regulations.

Compared to all these once-through projects, again, the most analogous project is Contra Costa. The PMPD proposes a factual and defensible decision for ESPR based upon its unique facts and using applicable law. Under that required approach, ESPR cannot and does not have any aquatic marine impacts, let alone any significant impacts. Moreover, no new entrainment study is needed or required at this time because the cooling system being relied upon is an operating, permitted system, not a new or changed system.

Project is Designed for the Full Capacity of Intake #1: 208 MGD

At the PMPD workshop, CEC Staff asserted that uncontested evidence showed that ESPR would operate at full capacity with substantially less than 208 MGD. That assertion was incorrect. The flow values that Staff cited could only have been from CEC Staff's proposed cooling alternative that proposed using non-treated, secondary sewage effluent from Hyperion Treatment Plant to cool ESPR. Thus, the flow numbers could not have reflected the use of seawater. Most importantly, ESP II clearly and vigorously contested the practical basis of those flow numbers as well as the whole infeasible proposal and presented more than adequate evidence regarding

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[1] In its letter dated, August 28, 2002, the LARWQCB stated "Under the terms of this NPDES permit, the proposed ESPR will be allowed to withdraw, utilize for power plant cooling purposes, and then discharge back into Santa Monica Bay up to 207 million gallons per day (mgd) of water"

the infeasibility of the alternative cooling proposal. The alternative cooling proposal was fraught with faulty assumptions and methodologies and erroneous conclusions. In addition to the proposal not being feasible due to discharge temperature limitations, it fails in presenting a complete solution.

The proposal incorrectly portrays the alternative approach as having a minor impact on output and efficiency. ESP II has carefully and scientifically proposed a project designed around the capabilities of the existing cooling system and its capacity. The idea that a highly contested and inaccurate model that tried to support the use of HTP sewage as a cooling medium could constitute uncontested evidence that ESPR could produce full power without requiring the full capacity of the cooling system is wrong and scientifically unfounded. The use of the existing cooling system capacity is a key component of the project's viability.

CEQA is Satisfied in the PMPD

Perhaps the largest confusion resulting from CEC Staff's opposition to ESPR is the application of the California Environmental Quality Act ("CEQA"). While some parties continue to claim that ESPR will result in unmitigated significant impacts to the aquatic marine environment, a few basic facts strip these claims of all credibility. First, ESPR does not make any changes to the physical environment.[2] Second, the 208 MGD maximum flow rate has never been and is still not currently considered to be causing a significant impact to the environment. Finally, and most importantly, the LARWQCB, the agency responsible for ensuring that the cooling system meets federal requirements such as the those of the Clean Water Act and state requirements including CEQA, allows, and will allow, the system to utilize 208 MGD of once through ocean water cooling flow. Thus, ESPR satisfies CEQA with regard to the aquatic marine environment.

Cooling System is Operating and Permitted

At the PMPD workshop, CEC Staff made incorrect statements regarding the condition and status of the cooling system. CEC staff claimed that there was no flow through the cooling system because ESGS had lost its permit and shut down the cooling system. That assertion was factually wrong. Both cooling systems are fully permitted and operating. The NPDES permit continues to allow both cooling systems to operate at maximum capacity. Both cooling systems are, in fact, operating. The

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[2] CEQA Guidelines, Section 15358, specify that "effects analyzed under CEQA must be related to a *physical change*." (emphasis added)

only permit surrendered was an air permit to operate the boilers in Units One and Two. Those air permits were surrendered just prior to the evidentiary hearings because the extended permitting process for ESPR had caused the deadline date to be reached for installing emission control technology on Units One and Two. The only viable decision while awaiting completion of the now thirty eight month ESPR permitting process was to surrender the air permits. To install emission control equipment on two units that ESP II has sought a permit to tear down would be a waste of resources. Even if this AFC is not approved, the owners of ESGS will still be free to install emission control equipment on Units One and Two to comply with air emissions requirements, and return them to operation, and continue to utilize ocean water for cooling under the existing NPDES permit.

Baseline Discussion is Misguided

Another discussion that has confused the record regarding CEQA has been the baseline arguments. ESP II proposed a flow cap as an enhancement and as a means of eliminating any even remotely possible theory of aquatic marine impacts arising from ESPR. By agreeing to limit flow to a theoretically argued baseline, ESP II was providing assurances to the Committee that there were no valid CEQA impact arguments. The question then became what baseline to use. Lost in the ensuing debate over baseline was the fundamental fact that ESPR was making no changes to the physical environment and that any arguments that there were impacts were theoretical at best. Moreover, there is no reason to believe that the maximum permitted flow of 208 MGD is capable of causing or has ever caused a significant impact. In that context, the flow cap is not a necessary element to ensure less than significant impacts: it is simply an extra assurance that ESPR cannot cause a significant impact. It is that context that should drive the selection of the value to be used in the flow cap, not the idea that the Commission must determine an exact, precise legal baseline from which to measure impacts.

In that context, a baseline of 139 billion gallons per year ("bgy") is very reasonable. This is primarily because the baseline covering the five years since the inception of California's electricity deregulation laws went into effect in 1998 through the period in question, or 2002, provides a value of 139 bgy. Perhaps more interesting, the most recent year of the data in the record, 2002, would result in an annual flow cap of 139 bgy. Thirdly, a baseline period of 1998-2000 which would represent all of the years when the facility operated under a deregulated paradigm, would also result in an annual flow cap of 139 bgy. Thus, a cap value of 139 bgy is a reasonable and adequate value to use for purposes of eliminating any ill-conceived argument that ESPR has or could cause significant impacts.

In the context of impact to plant operations, any cap placed on the total facility may affect the facility's ability to respond to California generation demand. Even with a 139 bgy cap, operating restrictions are anticipated. Additionally, flow caps make it difficult to manage availability for meeting timing of generation need. For example, if a disproportionate quantity of the annually allocated ocean cooling water is consumed in the first half of the year, power availability could be jeopardized in the second half of the year due to depleted cooling water balances.

The PMPD Satisfies The California Coastal Act

CEC Staff and some other parties have also confused the record by claiming that the California Coastal Act ("CCA") requires ESPR to enhance and restore the aquatic environment. In part, this argument flows from the factually wrong concept that ESPR will cause changes to the aquatic environment. Missing from this argument are the simple facts that:

1) ESPR makes no physical changes to the aquatic environment or the intake structure and its capacity; and,

2) The El Segundo Local Coastal Program specifically finds that the provisions of the CCA are satisfied by other existing federal regulatory programs.

Thus, ESPR has no effect on the aquatic environment that would require restoring or enhancing in the first place, and even if it did, the Local Coastal Program provides that those policies are satisfied by programs such as the NPDES permit issued by the LARWQCB.

There is No "Retained Jurisdiction" That Gives Coastal Commission's Comments a Higher Status in this Proceeding

The California Coastal Commission ("CCC") has made vague claims of retained jurisdiction. A careful reading of the Local Coastal Plan and Section 30519 of the California Coastal Act reveals that such arguments are relevant only to the development review process normally implemented by the CCC. Because this facility involves a thermal electric generating station, **the CCC has no jurisdiction over ESPR**. Instead, the Coastal Commission's role in this proceeding is limited to participating as a party.

There are No "30413" Reports That the Commission Must Respond To

The Coastal Commission and CEC Staff have also suggested that the Coastal

Commission has submitted formal reports under P.R.C. §30413 which should be partly binding on the Commission. Section 30413, however, has been mischaracterized and mis-applied. Section 30413 provides only for reports relevant to a "notice of intention", a document and process that is no longer required under state law.[3] The ESPR PMPD is not part of an NOI process, it is part of the "application for certification" process provided in P.R.C. § 25519 *et. seq*. Thus, the California Coastal Commission letters that purport to be providing a "30413 report" cannot be providing the report described in P.R.C. § 30413 since they are not being made in response to a notice of intention.

There is No Development in the Aquatic Environment for Coastal Act Purposes
ESPR includes no physical changes to the cooling systems structures or any other materials in the ocean. It does not increase the "intensity of use of water."[4] ESPR will utilize the existing operational system exactly as it is currently permitted and operated. Thus, under the CCA, there is no development component affecting the aquatic environment. For that reason, the Commission has no requirement to receive a report under section 30413 from the CCC with regard to the ocean environment. This is analogous to the beach access issue, an area of Coastal Commission regulation that often arises in coastal projects. Because ESPR is an existing project and is not

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[3] The changes to the Public Resources Code implemented by AB-1890 and SB-110 changed the AFC process and in doing so allowed projects to be certified without completing the Notice of Intention ("NOI") process specified in Public Resources Code, section 25502. ESPR does not involve an NOI. The report required by Public Resources Code section 30413, however, is specifically linked to the NOI process and specifies that the Coastal Commission must evaluate and report on the NOI "prior to the completion of the preliminary report required by section 25510. Section 25510 relates to the NOI process, not the AFC process and no longer connects to the power plant siting process. The Commission has continued to receive these reports from the California Coastal Commission and has often considered the Coastal Commission's concerns, but this treatment does not change the basic fact that the so called 30413 report does not have the legal authority that the Coastal Commission and CEC Staff claim.

[4] PRC §30106 defines development under the California Coastal Act to include "the placement or erection of any solid material or structure" or the "change in the intensity of the use of water" neither of which are implicated by ESPR's use of an existing, operating and permitted cooling system at or below current maximum allowed rates.

expanding its presence on the beach, there has been no need to consider the coastal access provisions of the California Coastal Act. Like the access issue, the project is not changing the ways in which ESGS uses or affects the ocean and thus there is no need to consider the marine environment provisions of the Coastal Act either. Thus, the CCC comments with regard to Biology are comments made as a party to the proceeding and subject to all of the scrutiny, evaluation, and consideration given to any party. They must be evaluated on the merits, not taken as a matter decided.

The CEQA Arguments Have Distorted the Coastal Act Issues
The argued theory that ESPR might possibly have some impact on the marine environment through possible and conjectured future flow conditions relevant to past conditions, has led several parties to confuse that CEQA argument with the project description and conclude that the Coastal Act's marine provisions are pertinent and must be complied with. A very tenuous argument under CEQA, however, does not change the basic fact, that under the California Coastal Act, there is no project in the ocean. Thus, ESPR is not a project in the ocean and there is no need to satisfy CCA marine provisions.

ESPR is Enhancing the Environment Even Though it is Not Required To Do So
ESPR includes substantial enhancements, some of which are ocean-based. BIO-2 requires that ESP II study the potential for the use of an aquatic filter barrier to substantially reduce entrainment. Should that technology be feasible at ESGS, the LARWQCB will be enabled to require it as part of its application of new 316(b) regulations to ESGS. BIO-1 requires contribution of one million dollars to the Santa Monica Bay Restoration Commission. There are other non-ocean enhancements such as the visual screening, landscaping and the bike path wall set-back and landscaping. Taken collectively, the project is providing substantial enhancements to many resources. Though some parties have confused these enhancements with mitigation obligations and compared them to projects where there were significantly more substantial impacts to the environment, the fact remains that ESPR is providing numerous enhancements to the community and environment, as espoused by testimony from local leadership of the communities of El Segundo and Manhattan Beach at the PMPD hearing.

EPA Approved 316(b) Regulations Make Biology Issues Moot
There is at least one more reason why biology should not be the reason to deter ESPR from approval. New federal regulations issued under section 316(b) of the Clean Water Act and signed by the US EPA Administrator on February 16, 2004, will result in significant entrainment reductions at ESGS. The rules fundamentally require a 60%

to 90% reduction in entrainment by implementing technology (such as an aquatic filter barrier) or operational controls (such as reducing flows). If those solutions prove infeasible or not cost-effective, restoration measures, such as habitat restoration or assisted fish recovery through hatchery programs, may be allowed. Because the regulations require an entrainment study, the regulations might allow a lesser reduction if it is clear that entrainment effects are low enough that any benefits obtained by reducing entrainment are outweighed by their costs.

Moreover the LARWQCB will be implementing the new regulations and requiring ESP II to accomplish everything that parties seek, and more. In that context, the biology issue is hardly a reason to otherwise deter ESPR from becoming a valuable contributor of clean and efficiently generated electricity to the Los Angeles load center and California in general.

The Aquatic Filter Barrier Condition is Valuable and Important
ESP II proposed the aquatic filter barrier (AFB) study because it will provide new and very important data about the ability to implement entrainment reduction technology in an environment such as Santa Monica Bay. With the new 316(b) regulations, which require 60% to 90% reductions in entrainment, numerous power plants all along the ocean coasts of the United States will be considering technologies such as aquatic filter barriers. By compelling this study, the Commission will ensure that the potential to use AFB technology will be better understood. The condition may result in the installation of an AFB.

CEC Staff and other parties seem to be opposing this condition by confusing it with mitigation. ESP II has offered this condition as an intelligent and beneficial enhancement to the already beneficial ESPR. Rejecting this beneficial condition would be a disservice to California. It would even be a disservice to the very resource that opposing parties are focused on protecting, the aquatic marine environments. AFB technology, when carefully studied and properly permitted, can only help that environment, not damage it.

There is No Legal Basis to Compel Particular Construction Deadlines
During the PMPD workshop, CEC Staff defended their proposed construction deadlines with inaccurate statements regarding South Coast Air Quality Management District ("SCAQMD") regulations. ESP II supports the Committee's decision to omit the construction milestone condition. The executive order that had provided some basis for such milestones has expired. Existing regulations clearly establish that the permit decision is valid for three years with the potential to extend the permit two

more years in total. CEC Staff stated that ESP II would be required to start construction within one year anyway because it was using emission reduction credits ("ERCs") from the community bank. That statement is incorrect. The only associated time limit for ESPR from the SCAQMD is a requirement that the project be operational within three years after issuance of the Permit to Construct from the SCAQMD. This limit arises because ESPR will use priority reserve ERCs. That limit can also be extended if authorized by SCAQMD. ESP II provided uncontested testimony that the SCAQMD has granted extensions in the past and would most likely grant extensions for ESPR's long demolition and construction process, if required and requested.

Thus, there is no authority or reason to impose deadlines on start of construction or any other milestone in this project. ESP II supports the Committee's decision to not impose the construction deadlines of COM-15.

Comments on Conditions
Several parties have made specific comments on the PMPD conditions of certification. Besides ESP II's objections to any construction milestones described above, the following comments are made to provide a post- workshop summary regarding PMPD conditions.

1) ESP II supports the PMPD in deleting **AQ-C5** which merely listed the specific ERCs contained in the FDOC.

2) The PMPD correctly states the emission limit for CO is 6ppm, not 2ppm as asserted by Staff. PMPD **AQ -9, 17 and 25** should not be changed. The South Coast Air Quality Management District Final Determination of Compliance ("FDOC"), page 39, Facility Permit To Operate, Section H, #195-3, dated February 14, 2002 specifies that the CO limit for ESPR will be 6ppm.

3) **AQ-26** of the PMPD suggests that the 5ppm NH3 requirement will be averaged over 60 minutes at **3%** O2. However, the FDOC, Page 39 Facility PTO, Section H, #195-5 states the 5ppm NH3 requirement will be averaged over 60 minutes at **15%** O2. AQ-26 should be consistent with the 15% standard established in the FDOC. Establishing this second standard for NH3 testing is impractical and inconsistent with the FDOC**.**

4) **AQ-30:** ESP II supports the PMPD in deleting AQ-30.

5) **BIO-2**: ESP II recommends that the Committee revise some of the language in BIO-2 as described in ESP II's first comments on the PMPD. The recommended revisions ensure the Committee's intent will be met that the condition not contradict the NPDES permit process.

6) **BIO-3**: ESP II notes that the PMPD version of BIO-3 does not indicate the commencement date of the flow cap. ESP II recommends that the CEC require that the flow cap take effect when the new Units 5, 6, and 7 begin Commercial operation. The flow cap is not necessary until that time because only Units 3 and 4 will be operational. If the condition is left as it is currently written, the flow cap might be interpreted to apply immediately upon Certification. In that case, the flow cap would be restricting the operation of Units 3 and 4.

7) **HAZ-2.** As stated in the workshop, ESP II does not object to the City of El Segundo's proposed change to the PMPD to require the hazardous materials floor plan exercise be conducted for each shift at the plant.

8) **HAZ-3:** ESP II supports the PMPD version of this condition, which matches the Agreed-To conditions in the Staff's December 13, 2002 document, to which all parties have agreed.

9) **HAZ-4** of the PMPD should be consistent with December 13, 2002 Agreed-To Condition language which included the following phrase: "Should the study conclude that substitution is infeasible **and/or** the project owner elects to continue…" (Emphasis added)

10) **LAND-1** should be replaced with the version published by CEC Staff on January 6, 2003 to which all parties agreed.

11) **NOISE-8.** Staff's proposed change is not consistent with the Agreed-To version from December 13, 2002. However, ESP II does not object to Staff's proposed change to this condition.

12) **SOCIO-2:** Public Service Mitigation Fees to the City of El Segundo. ESP II acknowledges that the December 13, 2002 Agreed To condition are consistent with the City of El Segundo's comment. The Committee indicated it would investigate the Agreed To condition.

13) **TRANS-5: Construction Traffic Control Plan.** ESP II agrees with the City of El Segundo's specific comment on this condition and supports adding back the deleted items from this condition.

14) **VIS-2:** ESP II does not object to Staff's and City of Manhattan Beach's proposed change to this condition.

15) **VIS-3, -5, - 6 and –7:** Staff's proposed changes to these conditions are not consistent with the Agreed-To version from December 13, 2002. However, ESP II does not object to Staff's proposed changes to these conditions.

16) **WASTE-3, WASTE-6, GEN-1, GEN-3, and GEO-1:** ESP II does not object to Staff's proposed changes to these conditions.

17) **Compliance**. ESP II has reviewed the Compliance language contained in the recently considered Salton Sea Geothermal Project Final Decision document. ESP II does not object to this language as a suitable replacement for the PMPD compliance language, with the following exception:

    COM-7, Annual Compliance Report: As written, this report is triggered by the phrase "After construction is complete…" ESP II requests that this phrase be replaced with "***After start of commercial operations…***" which is a defined event.

Conclusion

Not approving ESPR as substantially proposed in the PMPD would be a disservice to California and its growing electricity needs. The only real contested issue before the Commission is that of biology. But even that issue is really moot. Besides the valid arguments that the existing cooling system that will serve ESPR has never and cannot cause any significant impacts to the aquatic marine environment, the simple fact is that a new federal regulation will require significantly reduced entrainment at ESGS anyway. A failure to permit this project as proposed in the PMPD would result in the loss of a valuable, low impact, and efficient source of electricity for no good reason. As the Commission has noted, plant retirements and rising demand will inevitably call for new generation in California. ESPR is a logical and sound step towards meeting that need, particularly considering its location in the greater Los Angeles Load Center.

ESP II respectfully requests that the Committee make only the minor revisions to the PMPD necessary to satisfy legitimate comments of the parties.

Respectfully submitted,

/original signed/

John McKinsey
Counsel for El Segundo Power II LLC

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cc: Service List

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